

General Information Letter: Public Law 86-272 does not apply to sales of service.

February 16, 2000

Dear:

This is in response to your letter dated January 11, 2000 in which you state the following:

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, a California corporation ("xxx"), is a third-party debt collector authorized to do business in all fifty states and the District of Columbia. xxx' clients are major credit card companies and we collect only consumer debt. xxxx business activities in the State of Illinois are limited to contacting consumers with past due credit card accounts via telephone and U.S. Mail in an attempt to collect monies owed to our clients.

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx does not have employees in Illinois, nor does it own property in the state. The company is not physically present in the State of Illinois in any respect.

Please advise regarding whether any franchise, corporate and/or privilege taxes are applicable to this firm. If so, please advise whether this company is current with respect to those applicable taxes in Illinois. Our federal EIN is xxxxxxxxxx.

According to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). For your convenience, we enclose a copy of 2 Ill.Ad.Code §1200 explaining these two types of rulings issued by the Department.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

Section 201 of the Illinois Income Tax Act ("IITA"), 35 ILCS 5/101 et seq, imposes a tax measured by net income on corporations for the privilege of earning or receiving income in this State. The Due Process and Commerce Clauses of the Federal Constitution limit the power of States to subject foreign corporations to tax. The Due Process Clause requires that there exist some minimum connection between a state and the person, property, or transaction it seeks to tax (Quill Corp. v. North Dakota, 504 U.S. 298, 112 S.Ct. 1904 (1992)). Similarly, the Commerce Clause requires that the tax be applied to an activity with a substantial nexus with the taxing state. Id.

Unless protected by Public Law 86-272, a foreign corporation has the requisite nexus to subject it to Illinois income tax where any part of its income is allocable to Illinois in accordance with the provisions of Article 3 of the Illinois Income Tax Act (35 ILCS 5/301-304, 308). Public Law 86-272 is a federal statute that prohibits a state's taxation of interstate sales of tangible personal property. However, you specify that your company provides **services** to major credit card companies by collecting consumer debt by telephone and mail.

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Since your corporation is not in the business of selling tangible personal property, your company is not protected by Public Law 86-272.

If a corporation does establish nexus, business income will be apportioned to Illinois under Section 304 of the IITA. Illinois has used the 3-factor apportionment formula that takes into consideration the (1) payroll, (2) property and (3) sales of a corporation. Beginning with taxable years ending December 31, 2000, only sales will be used. This change to a "single-sales factor" will be phased in over a two-year period. Since you have no payroll or property within Illinois, the change does not effect your corporation. Should you have "nexus" with Illinois, you would use the amount of money that is retrieved from Illinois compared to the amount retrieved from all other states.

The question of nexus is highly fact-dependent. Therefore, the Department does not issue rulings regarding whether a taxpayer has nexus with the State. Such a determination can only be made in the context of an audit where a Department auditor has access to all relevant facts and circumstances. As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department.

Should you have additional questions, please do not hesitate to contact me.

Sincerely,

Heidi Scott
Staff Attorney -- Income Tax